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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,759	05/02/2001	Mark J. Hall	HANBEV.002RA	6043
20995 7590 09/21/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER STRIMBU, GREGORY J				
ART UNIT 3634		PAPER NUMBER		
NOTIFICATION DATE 09/21/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

09/847,759

**Applicant(s)**

HALL, MARK J.

**Examiner**

Gregory J. Strimbu

**Art Unit**

3634

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16, 20, 22-24, 26-35, 56, 57 and 59-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16, 20, 22-24, 26-35, 56, 57 and 59-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ ~~Notes of Informal Patent Application~~
- 6) ☐ Other: \_\_\_\_\_

### ***Election/Restrictions***

Applicant's election with traverse of Group I in the reply filed on July 30, 2007 is acknowledged. The traversal is on the ground(s) that there would be no serious burden on the examiner to examine all of the claims currently in the application. In light of the prosecution history of the application, the restriction requirement has been withdrawn at this time.

### ***Drawings***

The drawing correction filed October 6, 2008 has been approved. The drawings filed August 18, 2009 are objected to because the support legs 22a, the framework 22b and the panel 10e in figures 3 and 5 are not shown properly. Additionally, the length of the rearward most support leg 22a is not proper since it is shorter than the other two support legs 22a. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date

of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Figure 4 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 14' and 12' in the amendment to the specification filed October 6, 2008. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The amendments filed March 1, 2004, October 6, 2008, and August 18, 2009 are objected to under 35 U.S.C. 132(a) because they introduce new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is:

1) the threaded fasteners 15 extending through the panels 10e and 10f as shown in figure 3. It should be noted that column 2, lines 62-64 disclose that the panels 10e and 10f could have holes. However, the specification does not support the holes themselves being threaded which is what is shown in figure 3 since the fasteners 15 have not structure projecting below the panel 10e.

2) in figure 6, the plate structure on top of the shelf 16' and the hexagonally shaped fasteners. It should be noted that the length shelf would be greater than the width of the shelf 16'. Additionally, there is no support in the disclosure for hexagonally shaped fasteners.

The amendment filed August 18, 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

Recitations such as "a spacing defined between the upper ends of the second pair of support legs and the rearward portion of the support assembly sized so as to allow beverage containers to be inserted between a rear portion of the shelf and the rearward portion of the support assembly" on lines 17-20 of claim 20, lines 14-17 of claim 30, lines 1-5 of claim 33. Although the specification provides support for allowing the insertion of cans at the rear of the rack (see column 2, line 51 and column 4, line 61), it does not provide support for a clearance between the rack and the shelf to allow the insertion of cans into a rear of the rack when the rack is mounted to the underside of the shelf. It should be noted that in column 4, lines 26-29 do not refer to any spacing much less a spacing between a rear portion of the shelf and rearward portion of the support assembly.

Additionally, recitations such as "wherein the first and second pairs of support legs are sized such that beverage containers can fit between the beverage support surface and the second crossmember and such that the forward portion hangs lower than the rearward portion when the rack is hanging, by the first and second cross members, from said shelf above the rack" on lines 23-26 of claim 20 and lines 20-21 of claim 30. Although the specification provides for the support legs having different lengths (see column 3, lines 2-6 and column 4, lines 39-45), it does not provide support for the legs having different lengths when the rack is mounted to the underside of a shelf. It should be noted that the recitation referring to the various bars and rods in column 4, lines 26-29, is referring to the shape and style of the bars and does not refer to the forward portion hanging lower and the rearward portion when the rack is hanging

from a shelf. Additionally, figure 1 does not show the different lengths of the support legs such that a beverage container would roll to the front of the rack 16. It appears from figure 1 that the first two support legs 22a are the same length while the rearward most support leg is shorter than the first two. Thus, the middle leg 10b would interfere with the mounting of the rack 16 to the underside of a shelf. Even if one were to be able to mount the rack 16 as shown in figure 1 to an underside of a shelf, a beverage container would roll away from the front of the shelf rather than toward the front if said rack were mounted to the underside of a horizontal shelf. This appears to contradict the purpose of having legs 22a of different lengths.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

Claims 1-16, 20, 22-24, 26-35, 56, 57 and 59-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is suggested the applicant insert a comma following "(10a)" on line 8 of claim 1 and following "(10a)" on line 20 of claim 1. Recitations such as "the front rod member . . . defining a first plane" on lines 11-12 of claim 1 render the claims indefinite because it is unclear how the front rod member, the other rod member and the first and second panel members can all define a plane since the panel member rest on top of the rod members as shown in figure 1. Recitations such as "a projection of the front rod member" on line 20 of claim 1 renders the claims indefinite because it is unclear

whether or not the applicant is referring to the first panel member set forth above. If the applicant is not referring to the first panel member set forth above, then it is unclear what element of the invention comprises the projection of the front rod member. Recitation such as "a front rod like member" on line 3 of claim 5 render the claims indefinite because it is unclear if the applicant is referring to the front rod member set forth above. Recitations such as "like" on line 3 of claim 5 render the claims indefinite because it is unclear what the applicant is attempting to set forth. How much like a rod must a element be before it can be referred to as "rod like"? Recitations such as "whereby to carry indicia" on line 2 of claim 9 render the claims indefinite because it is unclear what element of the invention the applicant is referring to. It is unclear what element of the invention carries the indicia? Recitations such as "the upper ends" on line 10 and "the shelf" on line 19 of claim 20 render the claims indefinite because they lack antecedent basis. Recitations such as "an upper surface" on lines 2-3 of claim 29 render the claims indefinite because it is unclear whether or not the applicant is referring to the container support surface set forth above. Recitations such as "configured to hang" on line 12 of claim 30 render the claims indefinite because it is unclear if the first cross member actually hangs from the shelf or not. Note that the applicant is reciting the combination of the shelf and the rack. Recitations such as "beverage containers" on line 15 of claim 30 render the claims indefinite because it is unclear whether or not the applicant is referring to the beverage containers set forth above. Recitations such as "the first frame" on line 6 of claim 56 renders the claims indefinite because they lack antecedent basis. Recitations such as "a shelf" on line 13 of claim 57 render the claims



indefinite because it is unclear whether or not the applicant is referring to the shelf set forth above. Recitations such as "the apertures" on line 2 of claim 60 render the claims indefinite because it is unclear to which of the plurality of apertures set forth above the applicant is referring.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20, 22, 23, 26 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Lockwood (US 4732282). Lockwood discloses a rack comprising:

a support assembly having a forward portion (not numbered, but shown in figure 1), a rearward portion 30 and a beverage container support surface 48 extending from the forward portion to the rearward portion and configured to support a plurality of beverage containers, the forward portion and the rearward portion spaced along a longitudinal direction of the beverage container support surface;

a first pair of support legs (not numbered, but comprising the legs of 22) having lower ends connected to the forward portion at first and second lateral sides of the beverage support surface, the first and second sides of the beverage support surface being spaced along a lateral direction which extends transverse to the longitudinal direction, a first crossmember (not numbered, but comprising the top portion of 22)

connecting the upper ends of the first pair of support legs, the first pair of support legs and the first cross member lying in a first plane; and

a second pair of support legs (not numbered, but comprising the legs of 26) having lower ends connected to the rearward portion at the first and second lateral sides of the beverage support surface, a second crossmember (not numbered, but comprising the top portion of 26) connecting upper ends of the second pair of support legs, the second pair of support legs and the second cross member lying in a second plane;

a spacing 30 defined between the upper ends of the second pair of support legs and the rearward portion of the support assembly sized so as to allow the beverage containers to be inserted between a rear portion of the shelf and the rearward portion of the support assembly;

a stop 56 disposed at the forward portion of the support assembly, the stop including a panel 12 configured to support a label;

wherein the first and second pairs of support legs are sized such that beverage containers can fit between the beverage support surface and the second crossmember and such that the forward portion hangs lower than the rearward portion when the rack is hanging, by the first and second crossmembers, from said shelf above the rack.

Claim 56 is rejected under 35 U.S.C. 102(b) as being anticipated by Dickson. Dickson discloses a shelf structure configured to rest on and engage a shelf, the shelf structure comprising:

a front member 21 and at least two other members 21, 20 rearwardly spaced from the front member and, together with the front member, defining a first plane and configured to support additional shelving above the first plane;

a framework 15 defining a second plane disposed below the first frame and configured to support a plurality of beverage containers between the first and second planes;

and at least one support (labeled above) connecting at least the front member and the framework;

wherein at least a portion of the framework (labeled above) extends at least forward of a projection of the front member, the projection including with a stop (labeled above) extending in a direction from the second plane toward the first plane; and

members 23 on the front and at least one of the other members configured to fix the framework under another structure.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in the preamble of Jepson claim 1 in view of Dickson (US 3007580). The preamble of Jepson claim 1 discloses one of a cooler, visi-cooler, walk-in cooler

and glass-door cooler having fixed or adjustable shelves. The preamble of Jepson claim 1 is silent concerning a shelf structure.

However, Dickson discloses a shelf structure configured to rest on and engage a shelf which is horizontal or inclined, the shelf structure comprising:

- a framework 15 defining a second plane;

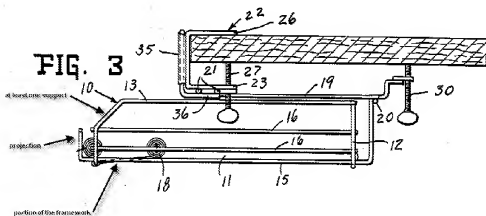
- a front rod member 21, at least one other rod member 21 rearwardly spaced from the front rod member, at least a first panel member 23 extending along the front rod member and a second panel member 23 extending along the at least one other rod member, the front rod member, the at least one other rod member, the first panel member, and the second panel member defining a first plane and being configured to support additional shelving above the first plane, the first and second panel members also being configured to support the shelf structure from one of said fixed or adjustable shelves with the shelf structure disposed below said one of said fixed or adjustable shelves as shown in figure 3; and

- at least one support (labeled below) connecting at least the front rod member 21 and the framework 15, wherein at least a portion of the framework (labeled below) extends at least forward of a projection 36 of the front rod member 21, and a stop (labeled below) on the projection extending in a direction from the second plane toward the first plane (16);

- further comprising at least one member 19 connecting the front and other rod members (claim 2);

wherein the at least one support comprises legs extending from opposite ends of the front and other rod members (claims 3, 4);

wherein the framework comprises further rod members 13 extending from one end at the stop to an opposite end that is rearward of a rearward most one of the at least one other rod member 21 (claims 6, 7, 8).



Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in the preamble of Jepson claim 1 in view of Dickson as applied to claims 1-8 above, and further in view of Lockwood (US 4732282). Lockwood discloses a shelf structure comprising a front panel 12 at a front side of a stop.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art in the preamble of Jepson claim 1, as modified above, with a front panel, as taught by Lockwood, to indicate the price of the item being dispensed from the shelf structure.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lockwood as applied to claims 20, 22, 23, 26 and 29 above, and further in view of Dickson. Dickson discloses first 22 and second 22 panel members connected to first 21 and second 21 cross members and threaded fasteners 27 connecting the first and second panel members to a shelf.

It would have been obvious to one of ordinary skill in the art to provide Lockwood with panel members, as taught by Dickson, to enable the rack to be mounted underneath a shelf.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lockwood as applied to claims 20, 22, 23, 26 and 29 above. Lockwood is silent concerning the specific size of the support legs.

However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to provide the support legs with a size such that the rack can only receive said beverage containers having at least one dimension less than about 2.5 inches.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lockwood as applied to claims 20, 22, 23, 26 and 29 above, and further in view of Dickson. Dickson discloses a support assembly configured to support a plurality of

parallel files of beverage containers extending between a rearward portion and a forward portion.

It would have been obvious to one of ordinary skill in the art to provide Lockwood with a plurality of parallel files, as taught by Dickson, to enable the rack to hold more containers.

Claims 57 and 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dickson in view of Lockwood. Dickson discloses a shelf comprising:

a support assembly having a forward portion (labeled below) and a rearward portion (labeled below), the support assembly defining a support surface (not numbered, but shown in figure 3) configured to support a plurality of cylindrical beverage containers;

a stop (labeled below) disposed at the forward portion of the support assembly; first and second support portions (labeled above) disposed at the forward portion of the support assembly, the first and second support portions including upper ends, respectively, adapted to be disposed above the plurality of cylindrical beverage containers supported on the support surface;

at least first and second apertures (not numbered, but comprising the apertures for the fasteners 27) disposed adjacent the upper ends of the first and second support portions, respectively, the first and second apertures being configured to receive fasteners 27 for supporting the forward portion of the support assembly from a shelf

above the support assembly, the first and second apertures being spaced rearwardly from the stop;

third and fourth support portions (labeled below) disposed at the rearward portion of the support assembly, the third and fourth support portions including upper ends, respectively;

at least a third aperture (not numbered, but shown as the aperture for the fastener 30 in figure 3) disposed adjacent the upper ends of the third and fourth support portions, respectively, the third aperture being configured to receive a fastener 30 for supporting the rearward portion of the support assembly from a shelf above the support assembly; and

wherein the third aperture is spaced from a rearward most portion 20 of the rearward portion of the support assembly such that cylindrical beverage containers can be placed onto the rearward portion of the support assembly when the third aperture is connected to a shelf disposed above the support assembly by fasteners;

a horizontally extending plate (labeled below) (claim 60);

a horizontally extending plate 35 (claim 61). Dickson is silent concerning a panel and a fourth aperture.

However, Lockwood discloses a shelf structure comprising a front panel 12 at a front side of a stop.

It would have been obvious to one of ordinary skill in the art to provide Dickson with a front panel, as taught by Lockwood, to indicate the price of the item being dispensed from the shelf structure.





the shelf and a spacing defined between the upper ends of the second pair of support legs and the rearward portion of the support assembly sized so as to allow beverage containers to be inserted between the rearward area of the shelf and the rearward portion of the support assembly. See lines 12-17 of claim 30. It should be noted that claim 30 must be amended to recite the first and second cross members are hanging from the shelf before claim 30 can be allowed.

### ***Response to Arguments***

Applicant's arguments filed August 18, 2009 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning claim 56, the examiner respectfully disagrees. As shown in figure 3, Dickson discloses at least two other members 21 and 20 which define a first plane with the front member 21 since a line will pass through all three elements 21, 21 and 20 as shown in figure 3.

The applicant's comments concerning the rejection of claims 1-4, 15-17, 53 and 62 are moot in view of the new grounds of rejection.

The applicant's comments concerning the rejection of claims 9-12 and 19 are moot in view of the new grounds of rejection.

The applicant's comments concerning the rejection of claims 20, 22-24, 26, 28, 29, 30-32, 35, 36, 39, 49-52, 57-59, and 63-67 are moot in view of the new grounds of rejection. However, it should be pointed out that the combination of the teachings of Lockwood and Dickson would be to provide the two horizontal cross bars of Lockwood

with the clamping system of Dickson so as to be able to hang the dispenser from a shelf. In said combination, the forward clamping system 22 and 27 would be attached to the two horizontal cross bars of Lockwood while the rear clamping system 30 would be attached to the rear of the dispenser of Lockwood.

### ***Conclusion***

#### **THIS ACTION IS NOT MADE FINAL.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Strimbu/  
Primary Examiner, Art Unit 3634